

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF WISCONSIN

In Re:

MARK BERNARD HOPPE

CASE NO. 14-30702-MDM

Debtor

JOHN M. SCAFFIDI, Trustee of Mark Bernard Hoppe
4701 North Port Washington Road
PO Box 11975
Milwaukee, Wisconsin 53211

Plaintiff,

vs.

ADVERSARY NO.

ENER-CON, INC.
5840 Highway 60 East
Hartford, Wisconsin 53027

Defendant,

COMPLAINT BY TRUSTEE REGARDING A PREFERENCE

John M. Scaffidi, Trustee in Bankruptcy brings this Complaint against Ener-Con, Inc. and respectfully alleges as follows

1. Plaintiff is the duly appointed, qualified and acting Trustee of the estate of the above-named Debtor.
2. The Defendant, Ener-Con, Inc. ("defendant") is a Wisconsin Corporation with a mailing address of 5840 Highway 60 East, Hartford, Wisconsin 53027.
3. This adversary proceeding is one arising in the Chapter 7 case 14-30702-MDM now pending in this Court. This Court has jurisdiction over this adversary proceeding pursuant to under 28 U.S.C. §157, 1334 and 11 U.S.C. §544-551 and particularly

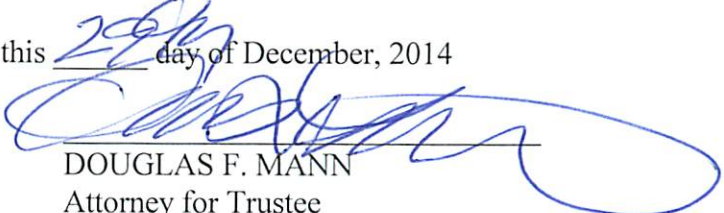
§547. This is a core proceeding under 28 U.S.C. §157 (b) (2) (F), (K) & (O).

4. The Debtor filed bankruptcy on August 22, 2014.
5. Within ninety days of the filing of bankruptcy, the Debtor paid to the Defendant by Garnishment in State Court, Washington County Case No. 13-CV-28B, the sum of \$23,499.79. (Exhibits 1-4)
6. The payment was made on account of an antecedent debt owed by the Debtor to the Defendant.
7. At the time of the payment, the Debtor was insolvent.
8. The payment referred to in the preceding paragraphs enabled the Defendant to receive more than she would have received under Chapter 7 of the Bankruptcy Code if the payment had not been made.
9. By reasons of the foregoing, the Defendant is liable to the Plaintiff in the sum of \$23,499.79.
10. The aforementioned payment of the interest by the Debtor:
 - a. Was for the benefit of the Defendant;
 - b. On account of an antecedent debt owed by the Debtor before such payment was made;
 - c. Made while the Debtor was insolvent;
 - d. Made within ninety days of the petition;
 - e. Enables the Defendant to receive more than such creditor would receive if the case was under Chapter 7, the payment had not been made and the creditor had received payment of their debt to the Bankruptcy Code.

WHEREFORE, Plaintiff prays that he have judgment against the Defendant as follows:

1. For judgment is favor of the Plaintiff and against the Defendant, for the sum of \$23,499.79.
2. For the costs of this action.
3. For such and other further relief as is just and equitable.

Dated at Milwaukee, Wisconsin this 22nd day of December, 2014



DOUGLAS F. MANN
Attorney for Trustee

Douglas F. Mann
Attorney for Trustee
740 North Plankinton Avenue, #210
Milwaukee, Wisconsin 53203
(414) 276-5355 (telephone)
(414) 276-5350 (facsimile)

blb

STATE OF WISCONSIN, CIRCUIT COURT WASHINGTON

COUNTY

For Official Use

(Name and Address)

Creditor(s): ENER-CON, INC.5840 HWY 60 EastHartford, WI 53027

-vs-

Debtor(s): Mark B. Hoppe d/b/a Hop-It5400 North Highway 83Chenequa, WI 53029

and

Garnishee: Embark Tree & Landscape Services, LLC655 E. Mackinac AveOak Creek, WI 53154JP Morgan Chase Bank NA101 W. BroadwayWAUKESHA, WIGarnishment
Summons and Complaint
for Non-Earnings
(Garnishment - 30302)Case No. 13CV028FILED
2014 MAY 21 AM 10:19
WASHINGTON COUNTY
CLERK OF COURT

TO THE GARNISHEE:

You are summoned as garnishee of the debtor(s). Within 20 days after you have been served with this summons and complaint, you are required to answer as described in §812.11 Wis. Stats. whether you are indebted to or have in your possession or under your control any property of the debtor(s). You must file the original of your answer with the Clerk of Circuit Court and serve a copy on the creditor's attorney or creditor.

If you fail to answer judgment will be entered against you for the amount of the creditor's judgment against the debtor plus the costs of this action.

If you are indebted to the debtor for payment of the sale of agricultural products grown or produced by a person or his or her minor children, you are ordered to pay to the debtor the prescribed amount. You are ordered to retain from the balance the amount of the creditor's claim and disbursements, as stated in the annexed complaint pending the further order of the court.

Any excess indebtedness shall not be subject to the garnishment. If you have property belonging to the debtor and the amount of indebtedness retained is less than the amount claimed and disbursements, you are to retain the property pending the further order of the court. The amount retained by you for the creditor's disbursements may not exceed \$40.

Signature of the Clerk of Circuit Court/Notary

/s/ THERESA M. RUSSELL

Date

5/21/14

CREDITOR'S CLAIM

THE CREDITOR STATES that a judgment, as described below, was entered in circuit court:

Name of Debtor(s) Mark B. Hoppe, d/b/a Hop-It	County (State of Wisconsin) Washington County
Case Number 13-CV-028	Date of Entry of Judgment April 16, 2013
	Amount of Judgment \$89,743.25

and that this summary provides the total amount due over and above all offsets.

Creditor's Claim \$88,549.69	Disbursements \$40.00	Interest \$1,350.69	Total Due on Creditor's Claim \$89,940.37
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The creditor believes that the garnishee is indebted to or has control or possession over property of the debtor which is not exempt from execution.



JPMorgan Chase & Co.
PO Box 183164
Columbus, OH 43218-3164



BRIAN R ZIMMERMAN
10700 RESEARCH DR STE 4
WAUWATOSA, WI 53226

Signature of Creditor/Attorney <i>B. D. Zimmerman</i>	Date 5/19/2014
Address Hurtado Zimmermann, SC 10700 Research Drive, Suite Four Wauwatosa, WI 53226	Attorney's Telephone Number 414-727-6250 Attorney's State Bar Number 1072563

STATE OF WISCONSIN

CIRCUIT COURT
CIVIL DIVISION

WASHINGTON COUNTY

ENER-CON, INC.

Plaintiff,

v

Case No. 13-CV-028B

Case Code: 30301

MARK B. HOPPE
d/b/a HOP-IT

Defendant.

ADMISSION OF SERVICE BY GARNISHEE JPMORGAN CHASE BANK, N.A.

Garnishee, JPMorgan Chase Bank, N.A. hereby ADMITS service of the Garnishment
Summons and Complaint for Non-Earnings in this action as of the ____ day of ____, 2013
as if service had been personally made upon Defendant on that date.

Dated this ____ day of ____, 2014.

JPMORGAN CHASE BANK, N.A.

By: _____

P.O. Address
Hurtado S.C.
Attorney Brian R. Zimmerman
10700 Research Drive, Suite Four
Wauwatosa, WI 53226
Phone: (414) 727-6250
Fax: (414) 727-6247
bzimmerman@hurtadosc.com

STATE OF WISCONSIN, CIRCUIT COURT, COUNTY
ENER CON INC

For Official Use

**Garnishee Answer
for Non-Earnings**

-vs-

MARK B HOPPE, et al.

And

Garnishee
JPMorgan Chase Bank N.A.

Case No. 13CV028B

The garnishee states:

1. The garnishee [X] does [] does not have control or possession of property belonging to the debtor.

Description:

Gross value of property \$28,499.79

If funds not held, provide reasons:

Memo:

Less exemption, if any, required by law \$5,000.00

TOTAL AMOUNT SUBJECT TO GARNISHMENT \$23,499.79

2. The garnishee [] is [] is not indebted to the debtor for agricultural products grown or produced by the debtor or minor children.

Description:

Gross amount owed _____

Less exempt amount per §812.18(2m)(b), Wis. State _____

TOTAL AMOUNT SUBJECT TO GARNISHMENT _____

3. The garnishee [] is [] indebted to the debtor for reasons other than the sale of agricultural products.

Description:

Gross amount owed _____

Less exemption, if any, required by law _____

TOTAL AMOUNT SUBJECT TO GARNISHMENT _____

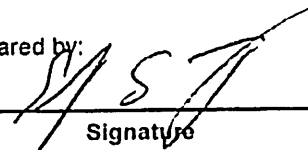
4. The total amount of the indebtedness or property retained for the court is \$23,499.79

These responses are based upon a search of data contained in JPMorgan Chase's centralized customer identification and account information system. That system may not necessarily capture all relevant information concerning the judgment debtor(s) or accounts.

Within the time period given in the summons:

- File the original with Clerk of Circuit Court at:

Prepared by:


Signature

SESSILYE S TAYLOR

Name and Title Printed or Typed

Document Review Specialist

Page 1 of 2

COAL-29May14-3383



- **Serve a copy on creditor's attorney or creditor.**

Friday, May 30, 2014

Date



COAL-28May14-3383

Page 2 of 2

DOUGLAS F. MANN
ATTORNEY AT LAW
SUITE 210, RIVER BANK PLAZA
740 NORTH PLANKINTON AVENUE
MILWAUKEE, WISCONSIN 53203

Telephone
(414) 276-5355

Facsimile
(414) 276-5350

December 3, 2014

Mr. Brian Zimmerman
10700 Research Drive, Suite 4
Wauwatosa, Wisconsin 53226

Via email BZimmerman@hzattys.com

RE: BANKRUPTCY OF MARK B. HOPPE
CASE NO. 14-30702-PP
PREFERENCE TO ENER-CON, INC.

Dear Mr. Zimmerman:

As a follow-up to our phone conference of December 2, 2014, I enclose the following:

1. The Order authorizing my employment as counsel in this case signed by the Court on December 1, 2014 and filed in the system on December 2, 2014.
2. A copy of the Petition Schedules and Statement of Financial Affairs for the bankruptcy.

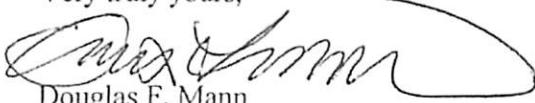
According to the Statement of Financial Affairs the funds were seized from the account of the debtor on May 30, 2014 of \$23,499.79. You had indicated in a phone conversation the garnishment was filed on May 21, 2014 allegedly outside the (90) day preference period but it was apparently served on May 30, 2014 within the (90) day period creating a presumption of insolvency.

In addition, the schedules in this case indicate the debtor had unsecured creditors of approximately \$5.5 million at that he filed. Therefore, I think to demonstrate insolvency would be an easy process.

You also raised the question of what was in the account at a given time. From the debtors schedules the bank was served on May 30, 2014. Regardless of the changes in the bank statement, the bank was liable for the balance in the account under Wisconsin Garnishment Law as of May 30, 2014 which was \$23,499.79.

Request is hereby made that you return this sum within (7) days of the date of this letter. After that point I am authorized to file Preference Complaint with the Bankruptcy Court.

Very truly yours,


Douglas F. Mann
Attorney for Chapter 7 Trustee

DFM/cm

cc: Attorney John Scaffidi, via email JMScaffidi@rsmlaw.com



Wisconsin Department of Financial Institutions

Strengthening Wisconsin's Financial Future

Search for:

ener con

Search Records

[Search](#)
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[Name Availability](#)

Corporate Records

Result of lookup for 1E10791 (at 12/3/2014 2:49 PM)

ENER-CON, INC.

You can: [File an Annual Report](#) - [Request a Certificate of Status](#) - [File a Registered Agent/Office Update Form](#)

Vital Statistics

Entity ID 1E10791

Registered Effective Date 01/13/1982

Period of Existence PER

Status Incorporated/Qualified/Registered [Request a Certificate of Status](#)

Status Date 01/13/1982

Entity Type Domestic Business

Annual Report Requirements Business Corporations are required to file an Annual Report under s.180.1622 WI Statutes.

Addresses

Registered Agent Office KENNETH M GOEMAN
5840 HWY 60 EAST
P O BOX 270047
HARTFORD, WI 53027-0047
[File a Registered Agent/Office Update Form](#)

Principal Office 5840 HWY 60 EAST
PO BOX 270047
HARTFORD, WI 53027
UNITED STATES OF AMERICA

Historical Information

Annual Reports

Year	Reel	Image	Filed By	Stored On
2014	000	0000	online	database
2013	000	0000	online	database
2012	000	0000	online	database
2011	000	0000	online	database



2010	000	0000	online	database
2009	000	0000	online	database
2008	000	0000	online	database
2007	000	0000	online	database
2006	000	0000	online	database
2005	000	0000	online	database
2004	000	0000	online	database
2003	000	0000	online	database
2002	000	0000	online	database
2001	002	0555	paper	microfilm
2000	001	0405	paper	microfilm
1999	013	2009	paper	microfilm
1998	006	1774	paper	microfilm
1997	006	0583	paper	microfilm
1996	006	0273	paper	microfilm
1995	006	1009	paper	microfilm
1994	007	0780	paper	microfilm

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**Certificates of
Newly-elected
Officers/Directors**

None

Old Names

None

Chronology

Effective Date	Transaction	Filed Date	Description
01/13/1982	Incorporated/Qualified/Registered	01/13/1982	****RECORD IMAGED****
03/22/1993	Change of Registered Agent	03/22/1993	FM 16-1993
04/22/1998	Change of Registered Agent	04/22/1998	FM 16 1998
02/21/2000	Change of Registered Agent	02/21/2000	FM 16-2000
03/28/2002	Change of Registered Agent	03/28/2002	FM16-E-Form
04/06/2011	Change of Registered Agent	04/06/2011	FM16-E-Form

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